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No. 87-1353

In the Supreme Court of the United States

OCTOBER TERM, 1987

O'GWEN L. KING and DOROTHY C. KING,
Petitioners,

vs.

RELIANCE INSURANCE COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Respondent submits that the following issue is the sole issue directly presented on the facts of this case:

1. Whether the district court properly vacated its order dismissing the underlying suit in contemplation of settlement of the action, based upon the finding of fact that the parties' agreement to settle the action and the concomitant release of respondent's claims were *conditional* on petitioners' payment of monies that petitioners did not in fact pay.

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TABLE OF AUTHORITIES

Respondent's brief cites only pertinent parts of the appendices to the petition and portions of the record below.

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Respondent Reliance Insurance Company[1] submits this brief in opposition to the petition for writ of certiorari in this case.

1. Respondent's related companies include the following: Reliance Insurance Company of Pennsylvania, Reliance Insurance Company of New York, Reliance United Pacific Surety Managers, United Pacific Surety Managers, United Pacific Insurance Company, Planet Insurance Company, Reliance Group Holding Company, Commonwealth Land Title Company, General Casualty Insurance Company. This statement is made in accordance with Rule 28.1 of the Rules of this Court.

REASONS FOR DENYING THE WRIT

The thrust of petitioners' argument is that the courts below improperly applied Rule 60(b) of the Federal Rules of Civil Procedure to set aside a settlement agreement and release binding upon the parties as a matter of state contract law. Based on this characterization of the decisions below, petitioners assert that the Eleventh Circuit's decision conflicts with decisions by other federal courts that hold parties to binding settlement agreements.

Petitioners mischaracterize what happened in this case. The lower courts here did not claim or purport to exercise authority to set aside a settlement agreement binding on the parties under state contract law. To the contrary—based on testimony developed before the trial court in an evidentiary hearing—the courts below merely *construed* the parties' agreement as making the final settlement of the underlying action and the release of respondent's claims conditional upon the payment of funds that petitioners did not in fact pay, and *applied* state law contract principles to that agreement.

This case, therefore, poses no significant issue of *federal* law whatsoever, but involves simply a dispute over facts and over the application of Florida contract law. And both lower courts agreed on those facts and on the proper construction and application of state law.

By the same token, the Eleventh Circuit's decision in no way conflicts with the federal decisions upon which petitioners rely. Those decisions simply recognize that the contract rights of settling parties ought to be sustained. Consistent with this principle, the courts below

considered and addressed what the contract rights are of the parties here in view of the factual circumstances of this case. Indeed, this case—which, as we now show, turns upon peculiar factual circumstances and atypical state-law principles—is unique, and warrants no further scrutiny by this Court.

Respondent is an insurance company that brought the underlying state-law contract action to recover from petitioners as sureties on a construction contract. In November 1984, the parties entered into an agreement to settle the action by March 1985 on terms explained more fully below. After this agreement was reached, counsel for respondent notified the district court that the parties contemplated that a settlement would be concluded in mid-March 1985. Assuming that this had occurred, the district court *sua sponte* entered an order dismissing the case on April 4, 1985. In its order dismissing the suit, the district court provided that it might vacate the order "[i]n the event settlement is not consum[m]ated for any reason." (Pet. App. C, 35).

Respondent subsequently moved to vacate the order dismissing the suit and sought to reinstitute its claims on the ground that the parties' settlement was not consummated. Petitioners opposed the motion on the ground that the settlement *was* consummated. The district court conducted an evidentiary hearing on this issue.

The record at that hearing shows that in November 1984 respondent agreed to settle its claims for payment by petitioners of $150,000 on or before March 19, 1985. The parties contemporaneously executed a settlement agreement and release on November 19, 1984 embodying

this understanding.[2] (Tr. 38-39). The settlement agreement called for payment by petitioners of the $150,000 within 120 days of the execution of the agreement; provided for the payment of interest in the amount of $3,000 if the $150,000 was not paid within 60 days of the execution date; contemplated the execution by respondent of a stipulation of dismissal upon payment of the settlement amount; and required that petitioners give respondent satisfactory collateral to secure petitioners' obligation to make the $150,000 payment. (Pet. App. G). The agreement further provided that in the event petitioners failed to pay $150,000 within 120 days, respondent could elect to proceed with its lawsuit and to release its security interest in any collateral provided by petitioners. (*Id.*, 55). On the same date, to satisfy the collateral requirement, petitioners gave respondent a letter of credit negotiable on or before March 19, 1985. (Tr. 22-23, 37, 39).

By March 1985, petitioners had not paid the $150,000 called for by the settlement agreement. Accordingly, on March 13, 1985, counsel for respondent sent a letter to petitioners urging petitioners to pay the agreed-upon settlement amount by the deadline specified in the settlement agreement, *i.e.*, March 19. (Tr. 46). Because petitioners failed to make payment within 60 days of the date of the settlement agreement, they were obliged to pay interest under that agreement in the amount of $3,000. (Tr. 45, 50). Petitioners sent respondent's counsel a check for the interest on March 19, 1985, but failed to remit payment of the $150,000 settlement amount. (Tr. 48).

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2. Although the settlement agreement and release bear different dates, the record establishes that both were executed on the same occasion on November 19. (Tr. 38-39).

On account of fortuitous circumstances described by the trial court (Pet. App. D, 36-37), respondent did not negotiate the letter of credit—which had been provided by petitioners as collateral—before the letter expired. The settlement agreement, however, nowhere required that respondent look solely to the letter of credit to obtain payment. The letter was sought and obtained by respondent simply to serve as collateral for petitioners' primary obligation under the agreement to pay respondent $150,000. Indeed, petitioners had indicated to respondent during the settlement negotiations that they might meet this obligation by liquidating real estate holdings. (Tr. 23). Respondent's representative testified that the letter of credit was intended simply to provide a means by "which [respondent] could be protected and [petitioners] would have time to liquidate [their] property within the hundred-twenty-day period or whatever else was necessary to satisfy this obligation." (*Ibid.*).

Subsequent to March 19, respondent's counsel advised petitioners that respondent had not negotiated the letter of credit and proposed that some arrangement be made to consummate the settlement agreement. (Tr. 53). Despite the fact that petitioners had not paid the settlement amount to respondent either directly or through negotiation of the letter of credit, petitioners insisted that the settlement had been consummated from the outset, on November 19, 1984, merely by petitioners' provision of *collateral—i.e.*, the letter of credit. This position was directly at odds with petitioners' own action in paying $3,000 for interest accrued through March 19, 1985 under the terms of the settlement agreement in recognition that they had *not* satisfied their primary payment obli-

gation under the settlement agreement as of that date. Further, as noted, the settlement agreement expressly provided that in the event that petitioners failed to pay the $150,000 in the time specified, respondent could *forego* its claim against *"any collateral"* furnished by petitioners and "proceed in the [pending] action." (Pet. App. G, 55-56) (emphasis added).

Without having paid the price for the settlement, petitioners sought to claim its benefits by enforcing the release executed contemporaneously with the settlement agreement.

Before the trial court, petitioners asserted that the release given to them by respondent was intended to extinguish respondent's claims in the underlying action *unconditionally,* regardless of whether the $150,000 settlement amount was ever *in fact* paid. (Pet. App. D, 38). Respondent contended, as the trial court described, that "the release was *conditional* and did not extinguish the underlying debt of $150,000." (*Id.*, 37) (emphasis added). The trial court recognized that "[i]t is the *intended effect* of this release that is fundamental to a determination of plaintiff's motion to set aside the dismissal." (*Id.*, 35) (emphasis added).

Based on the terms of "the security agreement, the letter of credit, and the [release] in light of the *surrounding circumstances as set out at the evidentiary hearing,*" the district court accepted respondent's position as to the intended effect of the settlement agreement and release. (*Id.*, 43) (emphasis added). Resolving conflicting testimony in respondent's favor, the court found "that the parties intended the matter to be closed either

upon *payment* of the $150,000 by March 19, 1985 or upon *negotiation* of the letter of credit in absence of such payment." (*Id.*, 43-44) (emphasis added). Because neither condition occurred, the settlement had not been consummated. And because the settlement had not been consummated, the district court's action in reinstating respondent's suit was unquestionably proper.

The decisions below are supportable entirely on the basis of this finding of fact, which involves no construction or application of federal law.

The lower courts' decisions rest, alternatively, on a second state-law ground warranting no review by this Court. Specifically, as the district court held, "[i]n Florida, unlike most states, a contract may be set aside on the basis of a *unilateral* mistake, unless the mistake is the result of an inexcusable lack of due care or the other party has so changed its position that rescission would be unconscionable." (*Id.*, 46) (emphasis in original). Assuming an otherwise binding release, the district court held that respondent was entitled under this unusual principle of *Florida law* to rescind its agreement in the circumstances of this case.

Petitioners take issue with the trial court's construction and application of Florida law to the facts of this case. (Pet., 16-17). But the correct interpretation and application of state contract law is not a matter that warrants consideration by this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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